IN THE HIGH COURT OF BOMBAY AT GOA

Second Appeal No. 19/2005.

Pedro Antonio Fernandes
(since deceased) represented by
his legal heirs. ..... Appellant.

V/s.

Board of Trustees of the Port of
Mormugao. ..... Respondent.

Mr. S. S. Kantak, Advocate for the appellant.

CORAM : R.M. LODHA, J.

DATE : 26TH OCTOBER, 2005.

P.C.

Heard Mr. S.S. Kantak, the learned Counsel for the appellant.

2. The appellant was employed as the Senior Accountant with the Mormugao Dock Labour Board. In the service record, his date of birth was recorded as 24.03.1928. Based on that, he was superannuated on 31.3.1986. The appellant claimed that his date of birth was in fact 24.03.1930 and wrongly recorded in the service record as 24.03.1928 and, accordingly, his superannuation from the

afternoon of 31.03.1986 was not proper. He, accordingly, filed the writ petition being Writ Petition No.49/1986. The Division Bench of this Court disposed of the writ petition by the Judgment dated 20/08/1987 holding thus :

> "... We feel that ends of justice would be met by allowing an opportunity to the petitioner to lead evidence to establish that the document produced by him pertain to himself and no one else. Petition succeeds to that extent. Petitioner undertakes to produce the aforementioned evidence as quickly as possible but not later than 15th September, 1987 and Mr. Kakodkar says that the Board will weigh the same and pass appropriate orders with utmost expedition. The superannuation order is not quashed and should the Board come to the conclusion that the petitioner's contention that he was born on 24.3.1930 is correct it will pass appropriate orders either by way of re-instatement or by the payment of damages. Rule made absolute in the above terms. Though we do not expect the Board to write an order as in judicial proceedings, we would expect the Board to give sufficient reasons in the order so as to enable the petitioner to appreciate the reasons as to why his evidence was discarded in case his claim is rejected."

3. It would be, thus, clear from the aforesaid decision of this Court that the superannuation order was not quashed. However, it

was observed that in the event of the Board accepting the petitioner's contention that his death of birth was 24.3.1930, the Board shall pass appropriate order either by way of reinstatement or by payment of damages.

4. As per the Order of this Court dated 20.8.1987, the Board examined the appellant's grievance about his date of birth and by Order dated 05/12/1988 rejected the appellant's claim that the date of birth was 24.03/1930. The appellant then approached the Civil Court and filed the suit for declaration that his date of birth is 24.03.1930 and that his superannuation on 31/03/1986 was not proper. The suit has been dismissed by the trial Court. The appeal filed by the appellant also came to be dismissed and the dismissal of the suit was upheld, but for different reasons.

5. The Appeal Court cannot be said to have erred in holding that the suit filed by the petitioner was not maintainable. As already indicated above, the appellant had already filed writ petition before this Court, challenging his superannuation on the ground that his correct date of birth was 24.03.1930. The Division Bench of this Court refused to quash the superannuation. However, the Division Bench left the matter to be examined by the employer about the correctness of the date of birth. The employer, after hearing the petitioner, has held that the case of the petitioner that the date of

birth 24.03.1930 was not acceptable. Obviously, the suit filed by the appellant challenging the Order dated 05.12.1988 was misadventure and abuse of the process of the Court and such a suit was not maintainable on the basis of the earlier Judgment of this Court referred to hereinabove.

6. The second appeal does not give rise to any substantial question of law.

7. Dismissed in limine.

R.M. LODHA, J.

ssm.